

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SULLIVAN & CROMWELL LLP,	:	
	:	
Petitioner,	:	
	:	
v.	:	
	:	
JAMES C. JUSTICE II (individually and	:	Index No. _____
as Trustee of the James C. Justice GRAT	:	
No. 1 and of the James C. Justice GRAT	:	
No. 2), JAMES C. JUSTICE III,	:	
JILLEAN L. JUSTICE, and JAMES C.	:	
JUSTICE COMPANIES, INC.,	:	
	:	
Respondents.	:	
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PETITION TO CONFIRM ARBITRATION AWARD

1. This is a special proceeding to confirm an arbitration award pursuant to Article 75 of the New York Civil Practice Law and Rules. A copy of the Award at issue is annexed hereto as Exhibit A.
2. Petitioner Sullivan & Cromwell LLP (“Sullivan & Cromwell”) is a limited liability partnership, with its principal place of business at 125 Broad Street, New York, New York 10004. (Ex. A, ¶ 2.)
3. Respondent James C. Justice II is a citizen of West Virginia. (Ex. A, ¶ 3.)
4. Respondents James C. Justice III and Jillean L. Justice are citizens of Virginia. (Ex. A, ¶¶ 4-5.) James C. Justice III and Jillean L. Justice are the adult children of Respondent James C. Justice II.
5. Respondent James C. Justice Companies, Inc. is a Delaware corporation with its principal place of business in West Virginia. (Ex. A, ¶ 6.)

6. Venue is proper in this Court pursuant to CPLR § 7502(a)(i) because Sullivan & Cromwell does business in New York County, and because the arbitration at issue in this special proceeding was conducted in New York County.

7. This Court has subject matter jurisdiction of this special proceeding under CPLR § 7501 because it is an application to confirm an arbitral award.

8. This Court has personal jurisdiction over Respondents James C. Justice II, James C. Justice III, Jillean L. Justice, and James C. Justice Companies, Inc. because they entered into an Engagement Letter with Sullivan & Cromwell dated February 18, 2014 agreeing that any dispute concerning Sullivan & Cromwell's fees would be resolved by "binding arbitration in New York City." The Engagement Letter also recited that it "shall be governed by and interpreted in accordance with the laws of the State of New York." A copy of the Engagement Letter is annexed hereto as Exhibit B.

BACKGROUND

9. Pursuant to the Engagement Letter, during 2014 and 2015, Sullivan & Cromwell represented Respondents in a lawsuit in the Court of Chancery of the State of Delaware ("the Delaware litigation"). (Ex. A, ¶ 7.) In the Delaware litigation, Respondents sought to recover money damages from Mechel Bluestone Inc. (a Delaware company) and Mechel Mining OAO (a Russian company) pursuant to a 2009 contract. (*Id.*, ¶ 8.)

10. In the Engagement Letter, Respondents agreed to pay Sullivan & Cromwell (a) an upfront retainer of \$1 million and (b) a contingent fee equal to 15% of the "value" of any "Recovery" obtained in 2015 by Respondents in connection with the Delaware litigation (minus the \$1 million retainer). (Ex. B, ¶¶ 1, 5-6; *see* Ex. A, ¶¶ 14-16.)

11. In February 2015, the Delaware litigation was settled in a deal that provided, among other things, for Respondents to re-acquire certain coal properties that they had sold to the Mechel entities years earlier. (Ex. A, ¶ 19.) Although the Engagement Letter obligated Respondents to pay Sullivan & Cromwell 15% of the “value” of those coal properties (minus \$1 million), Respondents refused to pay anything.

12. The Engagement Letter provided that any dispute concerning Sullivan & Cromwell’s fees would be “resolved expeditiously via binding arbitration in New York City before 3 arbitrators, all of whom shall be members of the New York bar, under the rules of the American Arbitration Association,” and that “[t]he designated arbitrator(s) shall have the authority to award any and all relief that would otherwise be available in a court of law, and judgment on any award may be entered in any court of competent jurisdiction.” (Ex. B, ¶ 6, p. 5; *see* Ex. A, ¶¶ 26-27.)

THE ARBITRATION PROCEEDINGS

13. On March 11, 2015, Sullivan & Cromwell filed a Statement of Claim against Respondents with the American Arbitration Association (“AAA”) in New York City pursuant to the Engagement Letter. Sullivan & Cromwell sought an award of legal fees pursuant to the terms of the Engagement Letter. (Ex. A, ¶ 24.)

14. Respondents James C. Justice II, James C. Justice III, Jillean L. Justice, and James C. Justice Companies, Inc. filed an answering statement with the AAA on April 8, 2015. (Ex. A, ¶ 25.) Respondents were represented by Frost Brown Todd LLC, a law firm in Lexington, Kentucky, throughout the arbitration. Respondents did not dispute, and have never disputed, that the amount of legal fees they owe to Sullivan & Cromwell pursuant to their contract (the Engagement Letter) should be resolved by an AAA arbitration in New York City.

15. On June 9, 2015, after sending the parties the resumes of fifteen potential arbitrators and receiving the parties' "strike and rank" lists of those potential arbitrators, the AAA appointed Sherman Kahn, Richard Silberberg, and Irene Warshauer, all of whom are members of the New York Bar, as arbitrators. (*See* Ex. A, ¶ 28.) On information and belief, Arbitrator Kahn is and has been a member of the New York Bar since 2004; Arbitrator Silberberg is and has been a member of the New York Bar since 1976; and Arbitrator Warshauer is and has been a member of the New York Bar since 1966.

16. On June 9 and 10, 2015, the AAA sent counsel for all parties disclosure statements by Arbitrators Kahn, Silberberg and Warshauer, and advised the parties that objections to these disclosures or to the appointment of these arbitrators were due on June 23, 2015. (*See* Ex. A, ¶ 28.) No party ever objected to the appointment of Arbitrators Kahn, Silberberg and Warshauer, raised any objection regarding their impartiality, or accused any of them of any misconduct.

17. On January 26, 27, 28 and 29 and March 3, 2016, the Panel conducted a five-day Hearing in New York County pursuant to the AAA's Commercial Arbitration Rules. The Panel heard testimony from five fact witnesses and three expert witnesses and received hundreds of exhibits, and the Hearing transcript is nearly 1,500 pages. The Panel also requested and received voluminous post-Hearing submissions. (*See* Ex. A, ¶¶ 32-34.)

18. The Panel declared the proceedings closed on April 14, 2016. (Ex. A, ¶ 35.)

THE ARBITRATION AWARD

19. On May 12, 2016, the Panel issued a written Award (Ex. A hereto) under the rules of the AAA in favor of Sullivan & Cromwell. The Award was signed and affirmed by Arbitrators Kahn, Silberberg, and Warshauer.

20. The Panel found that Sullivan & Cromwell is entitled to legal fees of \$2,594,776.77 pursuant to the Fee Agreement. (Ex. A, p. 33.) The Panel further found that Sullivan & Cromwell is entitled to pre-award interest at a rate of 8% per year, in the amount of \$253,918.30. (Ex. A, ¶¶ 128-32, p. 33.) The Panel also ordered Respondents to pay Sullivan & Cromwell's costs associated with prosecuting the arbitration, in the amount of \$320,204.12, and to reimburse Sullivan & Cromwell \$86,999.27 for the portion of the administrative fees of the AAA and compensation of the Panel it had incurred. (Ex. A, pp. 33-34.) Finally, the Panel ruled that Sullivan & Cromwell is entitled to interest at a rate of 9% per year from the date of the Award, up to and including the date on which the amount due on the Award is paid in full. (Ex. A, p. 34.) The Award therefore requires Respondents to pay Sullivan & Cromwell a total of \$3,255,898.46, with post-award interest running from May 12, 2016 at a rate of 9% per year. Respondents are jointly and severally liable for those amounts.

21. A copy of the Award was transmitted to Sullivan & Cromwell and to Respondents' counsel on May 12, 2016.

22. Less than one year has expired from the date of delivery of the Award to the parties.

23. The Award has not been vacated or modified.

24. No prior application for relief related to this Award has been sought in this or any other court.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court enter an Order confirming the Award pursuant to CPLR § 7510, and directing that a judgment, substantially in the form of Exhibit C annexed hereto, be entered in favor of Sullivan & Cromwell pursuant to CPLR §§ 5002-5004 and 7514(a): (i) CONFIRMING the Award; (ii) DECLARING that interest shall accrue on such Award at 9% per annum, running from May 12, 2016; and (iii) GRANTING Sullivan & Cromwell such other and further relief as the Court may deem just and proper, together with the costs of this Petition.

DATED: May 23, 2016
New York, New York

By: /s/ David B. Tulchin
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